

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis

Bankruptcy Judge
Modesto, California

September 7, 2023 at 10:00 a.m.

1. [23-90111-E-11](#)

MICHAEL HOFMANN
Brian Haddix

**CONTINUED MOTION FOR RELIEF
FROM AUTOMATIC STAY
7-24-23 [[122](#)]**

**RURAL COMMUNITY ASSISTANCE
CORPORATION VS.**

1 thru 2

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).

Local Rule 9014-1(f)(2) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Subchapter V Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on August 15, 2023. By the court's calculation, 23 days' notice was provided. 14 days' notice is required.

The Motion for Relief from the Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Subchapter V Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, -----

The Motion for Relief from the Automatic Stay is granted, the court determining that the personal property is not property of the Bankruptcy Estate.

September 7, 2023 at 10:00 a.m.

Rural Community Assistance Corporation (“Movant”) seeks relief from the automatic stay to file an Application for Writ of Possession against The Valley Home Rice Company (“VHRC”). Debtor Michael Erich Hofmann (“Debtor”) is a guarantor of the VHRC obligation to Movant.

Movant argues that on April 1, 2019, VHRC executed a Promissory Note in favor of Movant for \$200,000. Further, VHRC executed a Commercial Security Agreement which gave Movant a security interest in various personal property assets of VHRC. Additionally, Debtor executed a Personal Loan Guarantee which guaranteed the performance of duties and obligations of VHRC. Movant requests relief from the stay to take possession of machinery secured by the Commercial Security Agreement.

NO DOCKET CONTROL NUMBER

Movant is reminded that the Local Bankruptcy Rules require the use of a new Docket Control Number with each motion. LOCAL BANKR. R. 9014-1(c). Here, the moving party failed to use a Docket Control Number. That is not correct. The court will consider the motion, but counsel is reminded that not complying with the Local Bankruptcy Rules is cause, in and of itself, to deny the motion. LOCAL BANKR. R. 1001-1(g), 9014-1(c)(l).

FAILURE TO PROVIDE EVIDENCE

Movant’s Motion makes several factual assertions. However, no declaration of the Movant or other evidence was filed to support those assertions.

At a very basic level, every law student is taught that the court relies on properly authenticated, admissible evidence to establish facts in any proceeding—the court cannot and does not merely take counsel at their word. Apart from the practical effect that the court has been given a request for relief without any established factual basis, the Local Rules also affirmatively require that evidence be filed along with every motion and request for relief. LOCAL BANKR. R. 9014-1(d)(3)(D). Failure to comply with the Local Rules is grounds for an appropriate sanction. LOCAL BANKR. R. 1001-1(g).

PLEADINGS FILED AS ONE DOCUMENT

Movant filed the Motion and Exhibits in this matter as one document. That is not the practice in the Bankruptcy Court. “Motions, notices, objections, responses, replies, declarations, affidavits, other documentary evidence, exhibits, memoranda of points and authorities, other supporting documents, proofs of service, and related pleadings shall be filed as separate documents.” LOCAL BANKR. R. 9004-2(c)(1). Counsel is reminded of the court’s expectation that documents filed with this court comply as required by Local Bankruptcy Rule 9004-1(a). Failure to comply is cause to deny the motion. LOCAL BANKR. R. 1001-1(g), 9014-1(l).

These document filing rules exist for a very practical reason. Operating in a near paperless environment, the motion, points and authorities, declarations, exhibits, requests for judicial notice, and other pleadings create an unworkable electronic document for the court (some running hundreds of pages). It is not for the court to provide secretarial services to attorneys and separate an omnibus electronic document into separate electronic documents that can then be used by the court.

DISCUSSION

11 U.S.C. § 362(d)(1)

Whether there is cause under 11 U.S.C. § 362(d)(1) to grant relief from the automatic stay is a matter within the discretion of a bankruptcy court and is decided on a case-by-case basis. *See J E Livestock, Inc. v. Wells Fargo Bank, N.A. (In re J E Livestock, Inc.)*, 375 B.R. 892 (B.A.P. 10th Cir. 2007) (quoting *In re Busch*, 294 B.R. 137, 140 (B.A.P. 10th Cir. 2003)) (explaining that granting relief is determined on a case-by-case basis because “cause” is not further defined in the Bankruptcy Code); *In re Silverling*, 179 B.R. 909 (Bankr. E.D. Cal. 1995), *aff’d sub nom. Silverling v. United States (In re Silverling)*, No. CIV. S-95-470 WBS, 1996 U.S. Dist. LEXIS 4332 (E.D. Cal. 1996). While granting relief for cause includes a lack of adequate protection, there are other grounds. *See In re J E Livestock, Inc.*, 375 B.R. at 897 (quoting *In re Busch*, 294 B.R. at 140). The court maintains the right to grant relief from stay for cause when a debtor has not been diligent in carrying out his or her duties in the bankruptcy case, has not made required payments, or is using bankruptcy as a means to delay payment or foreclosure. *W. Equities, Inc. v. Harlan (In re Harlan)*, 783 F.2d 839 (9th Cir. 1986); *Ellis v. Parr (In re Ellis)*, 60 B.R. 432 (B.A.P. 9th Cir. 1985). The court determines that cause exists for terminating the automatic stay because Debtor and the Estate have not made post-petition payments. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432.

Non-Existence of Automatic Stay

Movant demonstrates exercising a variant of the adage “Discretion is the better part of valor” when dealing with the automatic stay. Given the application of 11 U.S.C. § 362(a) rendering acts in violation of the stay void and sanctions for violation of the stay being swiftly applied when a creditor is aware of the bankruptcy and gambles on a assertion that the creditor did not “think” the stay applied, seeking relief or confirmation there is not a stay is appropriate.

In this case, Movant seeks to exercise its lien rights pursuant to the terms of the Commercial Security Agreement between Movant and VHRC. The lien rights are to be exercised against all VHRC’s inventory, Chattel Paper, Accounts, Accounts Receivable, General Intangibles, Furniture, Fixtures, and Equipment whether owned at the time the Commercial Security Agreement was executed or acquired later.

The unauthenticated lien documentation demonstrates that the assets were owned by VHRC. On Schedule A/B, Debtor does not indicate that they hold or have any interest in these assets. Rather, Debtor states they have a 49% ownership in VHRC.

While owning 49% of VHRC, the Debtor does not own the assets of VHRC, a separate corporation. As defined by federal law, property of the bankruptcy estate consists of:

(a) The commencement of a case under section 301, 302, or 303 of this title creates an estate. Such estate is comprised of all the following property, wherever located and by whomever held:

(1) Except as provided in subsections (b) and (c)(2) of this section, **all legal or equitable interests of the debtor in property** as of the commencement of the case.

(2) **All interests of the debtor and the debtor’s spouse in community property** as of the commencement of the case that is—

(A) under the sole, equal, or joint management and control of the debtor; or

(B) liable for an allowable claim against the debtor, or for both an allowable claim against the debtor and an allowable claim against the debtor's spouse, to the extent that such interest is so liable.

(3) Any interest in property that the trustee recovers under section 329(b), 363(n), 543, 550, 553, or 723 of this title.

(4) Any interest in property preserved for the benefit of or ordered transferred to the estate under section 510(c) or 551 of this title.

(5) Any interest in property that would have been property of the estate if such interest had been an interest of the debtor on the date of the filing of the petition, and that the debtor acquires or becomes entitled to acquire within 180 days after such date—

(A) by bequest, devise, or inheritance;

(B) as a result of a property settlement agreement with the debtor's spouse, or of an interlocutory or final divorce decree; or

(C) as a beneficiary of a life insurance policy or of a death benefit plan.

(6) Proceeds, product, offspring, rents, or profits of or from property of the estate, except such as are earnings from services performed by an individual debtor after the commencement of the case.

(7) Any interest in property that the estate acquires after the commencement of the case.

11 U.S.C. § 541(a).

VHRC appears to be a California Limited Liability Company. As provided by California law, a limited liability company has “all the powers of a natural person in carrying out its business activities. . . ,” which includes ownership of its assets. Cal. Corp. § 17701.05.

The provisions of the automatic stay do not include property owned by a corporation or partnership in which the Debtor has an interest or ownership of stock.

§ 362. Automatic stay

(a) Except as provided in subsection (b) of this section, a petition filed under section 301, 302, or 303 of this title, or an application filed under section 5(a)(3) of the Securities Investor Protection Act of 1970, operates as a stay, applicable to all entities, of—

- (1) the commencement or **continuation**, including the issuance or employment of process, **of a judicial**, administrative, or other action or **proceeding against the debtor** that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title;
- (2) the **enforcement, against the debtor or against property of the estate, of a judgment** obtained before the commencement of the case under this title;
- (3) any **act to obtain possession of property of the estate or of property from the estate** or to exercise control over **property of the estate**;
- (4) any **act to create, perfect, or enforce any lien against property of the estate**;
- (5) any act to create, perfect, or **enforce against property of the debtor any lien** to the extent that such lien secures a claim that arose before the commencement of the case under this title;
- (6) any **act to collect, assess, or recover a claim against the debtor** that arose before the commencement of the case under this title;
- (7) the setoff of any debt owing to the debtor that arose before the commencement of the case under this title against any claim against the debtor; and
- (8) the commencement or continuation of a proceeding before the United States Tax Court concerning a tax liability of a debtor that is a corporation for a taxable period the bankruptcy court may determine or concerning the tax liability of a debtor who is an individual for a taxable period ending before the date of the order for relief under this title.

11 U.S.C. § 362.

The evidence presented by Movant demonstrates Debtor has “only” personally guaranteed the obligation of VHRC, which VHRC secured with a lien on assets owned by VHRC.

In obtaining a writ of possession to obtain possession of property owned by VHRC and then liquidating its collateral, Movant is not taking any act that would be in violation of the automatic stay.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Relief from the Automatic Stay filed by Rural Community Assistance Corporation (“Movant”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED the Motion is granted and automatic stay provisions of 11 U.S.C. § 362(a) do not apply to inventory, Chattel Paper, Accounts, Accounts Receivable, General Intangibles, Furniture, Fixtures, and Equipment of The Valley Home Rice Company (“VHRC”), which VHRC pledged to secure an obligation owed to Movant, which obligation Michael Erich Hofmann (“Debtor”) provided an unsecured personal guaranty for.

No other or additional relief is granted.

GARY HOFMANN, SHARON HOFMANN
VS.

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).

Local Rule 9014-1(f)(2) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor/Debtor in Possession, Debtor/Debtor in Possession's Attorney, Chapter 11 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on March 23, 2022. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

The Motion for Relief from the Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor/Debtor in Possession, creditors, the Chapter 11 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, opposition was presented by the Debtor/Debtor in Possession in Possession.

The Motion for Relief from the Automatic Stay is XXXXXXXXXX

REVIEW OF MOTION

Sharon and Gary Hofmann ("Movants") seeks relief from the automatic stay with respect to Michael Erich Hofmann's ("Debtor/Debtor in Possession") 8.33% interest in residential real property located at 13330 Valley Home Road, Valley Home, California ("Property"). On the Petition, Debtor/Debtor in Possession lists his residence as 13330 Valley Home Rd, Oakdale, California. In the Motion, this property is identified as being in Valley Home, California. The Supplemental Brief clarifies the discrepancy by stating Valley Home is an unincorporated area in Stanislaus County. Supplemental Brief, Dckt. 47 fn. 3. County assessment records designate the address to be in Valley Home, not Oakdale. *Id.*

At the prior hearing on the Motion, the court allowed for supplemental briefing due to Movants' failure to provide evidence as well as the need of additional briefing for the court to determine the interplay between the Bankruptcy Code, final judgments of a State Court, and property rights under State Law. Civil Minutes, Dckt. 43. Movants have since authenticated their exhibits of state court records through the Declaration of Meghan Baker, Partner at Movants' Counsel's firm. Declaration, Dckt. 40.

Movants argue relief is needed to perform obligations under final state court orders in a partition action of the Property. The State Court Order requires Debtor/Debtor in Possession to sell their 8.33% interest in the Property, as well as requires Movants' to sell their combined 91.66% interests. Exhibit D, Dckt. 22.

Movants' Supplemental Brief, Dckt. 47, provides the court with additional factual grounds for relief, which are summarized as:

(1) Debtor/Debtor in Possession's Interest in the Property - Debtor/Debtor in Possession has a 8.33% interest in the residential real property located at 1330 Valley Home Road, Valley Home, California.

(2) State Court Litigation - There was state court litigation brought by Movants to determine parties' interests in the Property and request a judgment for rent that Debtor/Debtor in Possession refused to pay to Movants. The State Court issued an interlocutory judgment which confirmed Debtor/Debtor in Possession's 8.33% interest and found a partition by sale is equitable. Additionally, the State Court awarded judgment which brought the total principal amount Debtor/Debtor in Possession owes to Movants to \$223,457.62.

(3) State Court Appeal - Debtor/Debtor in Possession appealed the interlocutory judgment and the Fifth District Court of Appeal affirmed the State Court Judgment in most parts. ^{FN. 1.}

FN. 1. The court notes, the Fifth District Court of Appeal reversed only one part of the interlocutory judgment in which they reduced the amount of credit the new owners received for their improvements on the Property. *Hofmann v. Hofmann*, No. F079977, 2021 Cal. App. Unpub. LEXIS 4583, at *117 (July 15, 2021).

(4) State Court Proceedings to Sell the Home - Debtor/Debtor in Possession refused to participate in a consensual sale of the Property. Debtor/Debtor in Possession made an all cash offer to purchase the home. However, the State Court found Debtor/Debtor in Possession had not shown proof of funds, and on February 28, 2023, approved the sale to a third party. Escrow was scheduled to close by March 31, 2023.

(5) Debtor/Debtor in Possession's Refusal to Leave the Property - Movants sought assurances that Debtor/Debtor in Possession would vacate by March 21, 2023. On March 15, 2023, Debtor/Debtor in Possession gave notice they would not be vacating the Property prior to the close of escrow. On March 17, 2023, Movants notified

Debtor/Debtor in Possession they would seek an order for writ of possession to compel Debtor/Debtor in Possession to vacate the Property. The request was set for hearing on March 21, 2023. On March 20, 2023, Debtor/Debtor in Possession filed for bankruptcy.

(6) Legal Grounds for Relief - Movants argue they are entitled to relief based on the following legal grounds:

- a. The State Court Judgment is final and binding on the bankruptcy court.
- b. Debtor/Debtor in Possession's Creditor's interests are limited to Debtor/Debtor in Possession's 8.33% interest.
- c. Movants are not adequately protected due to Debtor/Debtor in Possession's failure to maintain the Property.
- d. *Tucson Estates* Factors weigh in favor of the court abstaining from deciding the underlying property right issues. *In re Tucson Estates, Inc.*, 912 F.2d 1162 (9th Cir. 1990).

Supplemental Brief; Dckt. 47.

The court notes, the *Tucson Estates* Factors include factors in which a court may abstain in favor of state court adjudication of an issue. These factors are summarized as follows:

- (1) the effect or lack thereof on the efficient administration of the estate if a Court recommends abstention,
- (2) the extent to which state law issues predominate over bankruptcy issues,
- (3) the difficulty or unsettled nature of the applicable law,
- (4) the presence of a related proceeding commenced in state court or other nonbankruptcy court,
- (5) the jurisdictional basis, if any, other than 28 U.S.C. § 1334,
- (6) the degree of relatedness or remoteness of the proceeding to the main bankruptcy case,
- (7) the substance rather than form of an asserted "core" proceeding,
- (8) the feasibility of severing state law claims from core bankruptcy matters to allow judgments to be entered in state court with enforcement left to the bankruptcy court,
- (9) the burden of [the bankruptcy court's] docket,

(10) the likelihood that the commencement of the proceeding in bankruptcy court involves forum shopping by one of the parties,

(11) the existence of a right to a jury trial, and

(12) the presence in the proceeding of nondebtor/debtor in possession parties.

Tucson Estates, 912 F.2d at 1167 (citing *In re Republic Reader's Serv., Inc.*, 81 Bankr. 422, 429 (Bankr. S.D. Tex. 1987)) [this court reformatting the forgoing by breaking out each of the twelve elements into separate subparagraphs for ease of review).

At this point, the state court proceeding as been removed to this court. The Parties will address with the court whether they desire to proceed in this court or any parties will seek to have the State Court Action remanded.

Movants argue they are entitled from relief from the stay for “cause” pursuant to 11 U.S.C. § 362(d)(1) on the grounds that a final state court ordered compelled the sale of the Property and that Debtor/Debtor in Possession’s interest in the Property is not necessary for an effective reorganization. Supplemental Brief, Dckt. 47 at 5.

Debtor/Debtor in Possession’s Response to Motion and Movant’s Supplemental Brief

Debtor/Debtor in Possession filed an initial Opposition to the Motion and Declaration. Dckts. 37, 38. Debtor/Debtor in Possession states the enforcement of the judgment will prejudice the Debtor/Debtor in Possession in that:

1. Movants have locked Debtor/Debtor in Possession out of the sale process despite Debtor/Debtor in Possession offering to purchase the home for a competitive price. Opposition, Dckt. 37 at ¶ 1.
2. There are contingencies associated with the current sale that the current buyer has failed to meet. *Id.*
3. The Property is necessary for an effective reorganization because it is the proper location for their rice business. *Id.* ¶ 5.
4. Movants are adequately protected because Debtor/Debtor in Possession is maintaining the property, paying property taxes and insurance, and seeking to pay Movants in an amount more than the current sale. *Id.* ¶ 6.

At the prior hearing, Debtor/Debtor in Possession’s counsel asserted that Movants were adequately protected by the value of the Property. Counsel for the Debtor/Debtor in Possession indicated that the Debtor/Debtor in Possession sought to retain the Property in which he has 8.33% interest that is now property of the Bankruptcy Estate. However, Movants are not “mere” creditors with secured claims who are owed a finite amount, but are co-owners of the Property.

Debtor/Debtor in Possession filed a Response to Movants' Supplemental Brief on April 27, 2023. Dckt. 58. Debtor/Debtor in Possession insists cause for relief does not exist, "especially because of the breach of the California Residential Purchase Agreement and the Contingency for Sale of Buyer's Property addendum while the automatic stay was in effect." Response, Dckt. 58 at 1:22-25.

Debtor/Debtor in Possession argues the sale of the Property was contingent on buyer Michael G. Hudson ("Buyer"), selling Buyers existing property. Debtor/Debtor in Possession states that the proposed purchaser of Buyer's home backed out of escrow, which caused Buyer to take their house off market.

After this bankruptcy case was filed, Buyer put their house back on market, and on April 7, 2023, an offer of Buyer's home was accepted. Debtor/Debtor in Possession states this was a "critical breach" of the Purchase Agreement because Buyer had a duty to notify Movants and Debtor/Debtor in Possession, collectively, "Sellers," of the cancellation of escrow. Debtor/Debtor in Possession claims not informing Debtor/Debtor in Possession of the breach deprived Debtor/Debtor in Possession of their right to cancel the sale of the Property.

Movants' Reply

Movants filed a Reply to Debtor/Debtor in Possession's Response on May 4, 2023. Dckt. 63. Movants argue that Buyer removed the contingency on March 15, 2023, and the contingency was solely the benefit of Buyer. As evidence to support that Buyer removed the contingency, Movants direct the court to Buyer's Declaration, in which Buyer states, "[o]n March 15, 2023, I removed the contingency from my offer to purchase the Property, as our own home was in escrow at that point." There is no evidence for how Buyer removed the contingency, and whether Buyer provided notice to Debtor/Debtor in Possession.

Movant provides the court with well settled California case law in that a buyer may waive a condition precedent solely for their benefit. As the Second District Court of Appeal has stated:

Where all of the material factors of a real property transaction are present, and a seller would not be prejudiced by removal from the agreement of a condition inserted solely for the benefit of the buyer, it would be a gross injustice to the buyer to allow the seller to escape legal responsibility because the courts would not permit a waiver of the condition.

Reeder v. Longo, 131 Cal. App. 3d 291, 296-97 (1982).

DISCUSSION

Contingency Clause

The "Contingency for Sale of Buyer's Property" portion of the Purchase Agreement, Exhibit D, Dckt. 59 at 53, states Buyer's purchase of the Property was contingent upon Buyer selling their own property. The Contingency Agreement is summarized, in relevant part, below:

1. Buyer has 17 days after Acceptance with Sellers to enter into a contract for the sale of their property. Once accepting the contract for sale of their property, Buyer has 2 days, but not more than 17 days after Acceptance with Sellers, to deliver escrow evidence to Sellers.

2. Buyer will sign a listing agreement for Buyer's Property within 1 day after Acceptance.
3. Buyer has until no later than 3 days prior to the scheduled close of escrow of Sellers' Property to close escrow. Once Buyer's property closes, Buyer can no longer use the contingency to cancel the Agreement.
4. **Status of Sale of Buyer's Property**
 - a. Buyer agrees to keep Sellers informed about the status of the transaction for the sale of Buyer's property.
 - b. Within 2 days after Sellers' written request, but no earlier than the applicable time to remove contingencies in the contract for sale of Buyer's property, Buyer shall deliver to Sellers evidence of the removal of identified contingencies.
5. **Cancellation of Sale of Buyer's Property**
 - a. If either party subject to the sale of Buyer's property gives the other a notice of cancellation of contract, Buyer will, **within 2 days**, deliver to Sellers a written notice of that cancellation.
6. **Removal of Contingencies**
 - a. This contingency can only be removed in writing, even by Buyer, unless:
 - i. Buyer provides verification of sufficient funds to close escrow without the sale of Buyer's Property.
7. **Sellers' Right to Cancel**
 - a. If after first giving buyer a Notice to Perform, or written Notice to Remove Buyer Contingencies and Provide Proof of Funds, Buyer fails to perform certain actions.
 - b. If Buyer fails to deliver evidence of removal of contingencies in the sale of *Buyer's* property.
 - c. If Buyer gives notice to Sellers of a cancellation of contract for Buyer's Property.

Debtor/Debtor in Possession states, "while the automatic stay was *pending*, [Buyer] breached the terms of the [Contingency Agreement] an addendum to the [Purchase Agreement] informing the Seller's that a proposed purchaser backed out of the sale." Response to Supplemental Brief, Dckt. 58 at 3. Debtor/Debtor in Possession states that Buyer's breach "deprived the Bankruptcy Court of an important fact

concerning the status of the transaction concerning estate property while the automatic stay was pending.” *Id.*

Buyer, however, states they waived the contingency requirements on March 15, 2023. Dckt. 49. Buyer, nor Movant, provides evidence of how this waiver was effectuated.

Had Buyer not waived the contingency, there could be an argument that Buyer breached the Contingency Agreement by not providing notice of cancellation of the contract between Buyer and the purchaser of their home. Then, Sellers would have had the right to cancel the Purchase Agreement, although there is no such evidence that this would have occurred. There would be a question as to whether this breach were material, as Buyer re-listed their property and within a few weeks had accepted another offer.

However, the Motion is to grant relief from the automatic stay. The court does not determine underlying issues of ownership, contractual rights of parties, or issue declaratory relief as part of a motion for relief from the automatic stay in a Contested Matter (Federal Rule of Bankruptcy Procedure 9014).

Relief from Stay

The court may grant relief from stay for cause when it is necessary to allow litigation in a nonbankruptcy court. 3 COLLIER ON BANKRUPTCY ¶ 362.07[3][a] (Alan N. Resnick & Henry J. Sommer eds. 16th ed.). The moving party bears the burden of establishing a prima facie case that relief from the automatic stay is warranted, however. *LaPierre v. Advanced Med. Spa Inc. (In re Advanced Med. Spa Inc.)*, No. EC-16-1087, 2016 Bankr. LEXIS 2205, at *8–9 (B.A.P. 9th Cir. May 23, 2016). To determine “whether cause exists to allow litigation to proceed in another forum, ‘the bankruptcy court must balance the potential hardship that will be incurred by the party seeking relief if the stay is not lifted against the potential prejudice to the Debtor/Debtor in Possession and the bankruptcy estate.’” *Id.* at *9 (quoting *Green v. Brotman Med. Ctr., Inc. (In re Brotman Med. Ctr., Inc.)*, No. CC-08-1056-DKMo, 2008 Bankr. LEXIS 4692, at *6 (B.A.P. 9th Cir. Aug. 15, 2008)) (citing *In re Aleris Int’l, Inc.*, 456 B.R. 35, 47 (Bankr. D. Del. 2011)). The basis for such relief under 11 U.S.C. § 362(d)(1) when there is pending litigation in another forum is predicated on factors of judicial economy, including whether the suit involves multiple parties or is ready for trial. *See Christensen v. Tucson Estates, Inc. (In re Tucson Estates, Inc.)*, 912 F.2d 1162 (9th Cir. 1990); *Packerland Packing Co. v. Griffith Brokerage Co. (In re Kemble)*, 776 F.2d 802 (9th Cir. 1985); *Santa Clara Cty. Fair Ass’n v. Sanders (In re Santa Clara Cty. Fair Ass’n)*, 180 B.R. 564 (B.A.P. 9th Cir. 1995); *Truebro, Inc. v. Plumberex Specialty Prods., Inc. (In re Plumberex Specialty Prods., Inc.)*, 311 B.R. 551 (Bankr. C.D. Cal. 2004).

At the heart of this Motion is the Debtor/Debtor in Possession having a fractional interest in the Property to be sold. Debtor/Debtor in Possession’s co-tenants have prosecuted a partition action in the State Court. The result of that is the order for the residence at 13330 Valley Home Rd, Valley Home, California (“Property”) to be sold and the sales proceeds to be “partitioned,” it not being practical to give Debtor/Debtor in Possession 8.33% of the physical space in the residence. Debtor/Debtor in Possession does not dispute the validity of the state court’s order. Response, Dckt. 58. Additionally, Debtor/Debtor in Possession’s Schedules concedes that they only own a fractional interest of 8.33% interest, as described in the Second Amended Interlocutory Judgment. Schedule A/B, Dckt. 32; Exhibit B, Dckt. 20.

Movant contends they are not adequately protected in that the Property is “in unlivable conditions as a result of Debtor/Debtor in Possession’s possession” Supplemental Brief, Dckt. 47 at 15. Movant

provides evidence of deterioration in the Property, including roof, mold, and dry rot issues. Declaration of Real Estate Broker, Dckt. 46. Additionally, Debtor/Debtor in Possession has lived in the Property since 1982 and has never paid rent more than \$500 per month, and stopped paying rent altogether in 2015. Supplemental Brief, Dckt. 47 at 7.

The issues appear to have been litigated already, and a partition order has already been issued by the state court. Second Amended Interlocutory Judgment, Exhibit B, Dckt. 20. Additionally, Movant's have already been granted an *Ex Parte* Application to approve the sale of the Property to a third party buyer, Michael Hudson. Amended Order Granting *Ex Parte* Application, Exhibit D, Dckt. 22.

Movant is only seeking relief to complete the sale of the Property and otherwise comply with state court orders. Additionally, after the sale of the Property, the proceeds will still remain property of the estate.

As the court has noted in the prior civil minutes, there are issues concerning asserted and apparent property rights bearing on this Motion. The court does not determine property rights and interests in a motion for relief from the stay (Fed. R. Bankr. P. 7001 requires an adversary proceeding, unless the parties otherwise agree). The determination of the interplay between the Bankruptcy Code, the final judgments of State Court, and the property rights under State Law would be determined would be subject to a separate proceeding.

Request for Waiver of Fourteen-Day Stay of Enforcement

Federal Rule of Bankruptcy Procedure 4001(a)(3) stays an order granting a motion for relief from the automatic stay for fourteen days after the order is entered, unless the court orders otherwise. Movant requests that the court grant relief from the Rule as adopted by the United States Supreme Court.

The Motion states with particularity grounds upon which the request for waiver of the fourteen day stay is based. These include the delays in sale, Debtor/Debtor in Possession's failure to comply with the orders of the State Court, and a sale of the Property pending.

STATUTORY REQUIREMENT FOR ORDER APPROVING SALE OF PROPERTY OF THE BANKRUPTCY ESTATE

At the hearing the court addressed with the Parties a basic federal law issue, since the Debtor's 8.3% interest in the property is property of the Bankruptcy Estate, does any sale of it need to be approved pursuant to 11 U.S.C. § 363(b)? While the court may grant relief from the stay, must the court also either grant a motion to sell the property, and establish the sale to be through the state court, or abstain from ruling on the sale and authorize the State Court judge to do so as part of the exercise the original, but not exclusive, grant of jurisdiction of matters in a case under Title 11. 28 U.S.C. § 1334(b).

In light of this Statutory question, the court does not grant the Motion. At the request of Movant, the court further continues the hearing.

JUNE 29, 2023 HEARING

At the May 23, 2023 hearing on the Motion, the court raised a jurisdictional concern regarding allowing the partition sale to proceed in state court:

When there is a pre-bankruptcy state court action in which there is an order for the sale of property and that property, or fractional interest in that property, becomes property of the bankruptcy estate, does modification of the automatic stay allow the state court proceedings to proceed and the property subsequently ordered to be sold? Or, must the sale need to be approved pursuant to 11 U.S.C. § 363(b)?

No briefing has been filed by the Parties to address the federal law issue raised by the court. Both parties were made aware of the court's concern, however, tasked the court with finding the applicable authority to answer the legal question.

The court has addressed that, in many situations, relief of stay is necessary to allow litigation in a nonbankruptcy court, predicated on factors of judicial economy. Here, however, the issues have been litigated in state court and a partition sale has been ordered. Therefore, the only outstanding issue that remains with the state court action is to complete the partition sale of the Property.

The Fourth Circuit Court of Appeals has addressed when cause exists to grant the automatic stay to allow the completion of equitable distributions proceedings. *In re Robbins*, 964 F.2d 342 (4th Cir. 1992). In *Robbins*, plaintiff-spouse and defendant-debtor were involved in state court equitable distribution proceedings to determine how valuable stock should be divided during their marital dissolution. *Id.* at 343. After defendant-debtor was ordered by the “special master” to pay plaintiff-spouse \$2 million as their share of stock, but before the trial court entered the master’s judgment, defendant-debtor filed for Chapter 11 bankruptcy. *Id.* at 344. This stayed the equitable distribution proceedings, including the entering of judgment and payment to plaintiff-spouse. *Id.*

The bankruptcy court ordered the stay lifted because the proceedings involved interpretation and application of Florida law, and would be concluded best in Florida courts. *Id.* The bankruptcy court found that the bankruptcy court could protect the bankruptcy estate “by retaining jurisdiction and determining the rights of creditors to any of its property once the Florida distribution became final.” *Id.* at 344 (emphasis added). On appeal, the Fourth Circuit provided a list of factors to consider when determining whether there was cause to lift the stay:

- (1) whether the issues in the **pending litigation involve only state law**, so the expertise of the **bankruptcy court is unnecessary**;
- (2) whether modifying the stay will **promote judicial economy** and whether there would be greater interference with the bankruptcy case if the stay were not lifted because matters would have to be litigated in bankruptcy court; and
- (3) **whether the estate can be protected properly** by a requirement that creditors seek enforcement of any judgment through the bankruptcy court.

Id. at 345 (emphasis added). The court found all three factors weighed in favor of lifting the stay, determining the state court would determine the amount of the parties’ claims to the property in question,

while the bankruptcy court would retain jurisdiction to determine the allowance of claims against the estate.

The Ninth Circuit Court of Appeals has acknowledged *Robbins*' factors set forth by the Fourth Circuit, stating judicial economy and efficient administration should be considered by the bankruptcy court. *Benedor Corp. v. Conejo Enters. (In re Conejo Enters.)*, 96 F.3d 346, 353 (9th Cir. 1996) (citing *Robbins*, 964 F.2d at 353). Additionally, the Ninth Circuit Bankruptcy Appellate Panel has recognized *Robbins*, stating, "[t]he automatic stay is often modified to enable the state court to determine . . . aspects of property division . . . provided that the estate's interests are adequately protected." *Sticka v. Rivera (In re Rivera)*, No. OR-04-1596-MoRK, 2005 Bankr. LEXIS 3423, at *26 (B.A.P. 9th Cir. Sep. 14, 2005) (citing *Robbins*, 964 F.2d at 344).

Regarding state court partition actions, Maryland Bankruptcy Court used *Robbins* to resolve a partition dispute like the case at hand. *Flaherty v. Nims (In re Nims)*, No. 11-15968-TJC, 2011 Bankr. LEXIS 1359 (Bankr. D. Md. Apr. 13, 2011).

In *Nims*, a partition action was filed in state court and the state court ordered the real property to be sold. *Nims*, 2011 Bankr. LEXIS 1359 at *3. The state court appointed a trustee, the property received an offer on the property, and the property was scheduled to close. Prior to closing, the debtor refused to vacate the property or make it available for inspection. *Id.* at *5. In anticipation of sale, the debtor still refused to vacate the property, resulting in the trustee filing a motion for possession. The debtor then filed their bankruptcy case, staying the partition action. *Id.* at *6.

The bankruptcy court in *Nims* applied the *Robbins* factors to determine the stay should be lifted to allow the partition action to be resolved in state court. *Id.* at *11. The bankruptcy court found that the partition action only involved state law, and the expertise of the bankruptcy court was not necessary. *Id.* Additionally, the partition action was pending for over eighteen months and was very close to resolution. *Id.* at *12. The state court appointed the trustee to sell the property, ratified the contract, and entered a judgment of possession. *Id.* Additionally, a sale was already scheduled to close. *Id.* As for the bankruptcy estate, the bankruptcy court concluded the estate could be protected by "requiring the Trustee to deliver to the Chapter 13 trustee any net proceeds due to the Debtor as a result of the sale . . . Those net proceeds will be available for distribution to the Debtor's creditors in this bankruptcy case." *Id.*

This court agrees with the *Robbins* factors as applied to *Nims* in this case to allow a partition sale to proceed and conclude in state court. Here, as in *Nims*, the issues regarding the partition sale only involve matters of state real property law. Apart from how the estate's interest in Debtor's 8.33% ownership of the Property will be distributed, everything else can be decided in state court. The only outstanding issue that remains in the partition action is completing the sale of the Property. Judicial economy is promoted by allowing the sale to complete.

Additionally, the bankruptcy estate can be properly protected by allowing the sale to complete in state court. This court can protect the rights of creditors and the estate by retaining jurisdiction after the sale has been completed and the proceeds have been distributed. As in *Nims*, this bankruptcy court can require any proceeds generated from Debtor/Debtor in Possession's interest in the Property to be available for distribution to Debtor/Debtor in Possession's creditors.

COLLABORATION BY PARTIES IN INTEREST AND CONTINUANCE OF HEARING

At the hearing, Walter Dahl, Esq., the Subchapter V Trustee, reported that all parties agreed with the property at issue being sold through the Bankruptcy Court by the Subchapter V Trustee - whether by partial removal of the Debtor as the debtor in possession or other appointment as a professional of the Bankruptcy Estate in this case. As addressed in the court's decision on the Motion for Removal of the Debtor as the debtor in possession for this one property, such relief has been ordered and the Subchapter V Trustee shall move forward with the marketing and sale of the Property.

The court continues the hearing on the Motion for Relief at the request of Movant so that it says on the calendar for purposes of administration of these proceedings and for a status review.

September 7, 2023 Hearing

At the hearing, XXXXXXXXXXXX

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Relief from the Automatic Stay filed by Sharon and Gary Hofmann ("Movants") having been presented to the court, the court having identified the statutory question of whether a sale of property of the bankruptcy estate (here, the Debtor's 8.3% interest) needed to be approved as required by 11 U.S.C. § 363(b) rather than merely granting relief from the automatic stay for a state court action to proceed, the court announcing it would not grant the Motion based on what was now before the court, Movant requesting that the court continue the hearing rather than denying without prejudice for the sake of judicial and party economy, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion for Relief from the Automatic Stay is
XXXXXXXXXXXX

FARM CREDIT LEASING SERVICES
CORPORATION VS.

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 11 Trustee, creditors holding the twenty largest unsecured claims, creditors, parties requesting special notice, and Office of the United States Trustee on August 7, 2023. By the court's calculation, 31 days' notice was provided. 28 days' notice is required.

The Motion for Relief from the Automatic Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

<p>The Motion for Relief from the Automatic Stay is XXXXXXX.</p>
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Farm Credit Leasing Services Corporation ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2017 Flory WS910 Shredder, serial number 229 ("Property"). The moving party has provided the Declaration of Lisa Tollefson to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by G Arata & Son Inc. ("Debtor").

Movant provides evidence that it is the owner of the Property. Movant has provided a Lease Agreement to substantiate its claim of ownership. Exhibit A, Dckt. 83. Based upon the evidence submitted, the court determines that there is no equity in the Property for either Debtor or the Estate. 11 U.S.C. § 362(d)(2).

Movant argues there is a pre-petition arrearage of \$72,783.66. Motion, Dckt. 80. Additionally, Movant argues Debtor has not been keeping the equipment in good condition. *Id.* Movant has not provided

evidence to support this allegation. Movant also provides evidence, although hearsay, that Debtor no longer has been maintaining insurance on the Property. Declaration, Dckt. 82 ¶ 6. Movant has not provided personal knowledge testimony, or other evidence in the form of exhibits, that Debtor has failed to maintain insurance.

Review of Declaration

The Declaration of Lisa Tollefson, Dckt. 82, provides the following testimony, summarized by the court (unless shown in “quotation marks”):

Paragraph 1. Ms. Tollefson states that her title is that of “Portfolio Analyst - Leasing” and that she is an “authorized representative of Movant. Ms. Tollefson does not provide testimony whether she is an independent contractor or who is her employer.

Paragraph 2. Ms. Tollefson states that she has carefully reviewed Movant’s files, which are under her possession and control. She does not testify as to how and why she has possession and control of Movant’s files.

Ms. Tollefson further states that she has personal knowledge of the allegations of fact in the Motion, and makes the blanket statement; “I have personal knowledge of all the allegations of fact [in the Motion] are true and correct.” She further states that this “personal knowledge is based on “my personal knowledge and review of the filed.”

By the court’s reading of this, it is little more than the witness testifying that, “hey, whatever the attorney has alleged in the complaint/motion is true.” Further, she admits that she may well not have any personal knowledge, but “knows” only what she has read in the files which someone else has written.

As part of Paragraph 2, Ms. Tollefson further “admits” that she does not have personal knowledge of everything, but she “testifies” as to some matters based on “information and belief. There is no basis that the court can find under Federal Rule of Evidence 602 for a witness to testify under penalty of perjury as to facts for which that person is only “informed and believes.”

Rule 602. Need for Personal Knowledge

A witness may testify to a matter only if evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter. Evidence to prove personal knowledge may consist of the witness’s own testimony. This rule does not apply to a witness’s expert testimony under Rule 703.

Fed. R. Evid. 602. For an expert witness, Federal Rule of Evidence 703 allows the expert to provide opinion testimony based on information provided to the expert by others, notwithstanding the expert not having any personal knowledge of the facts the expert is told by others. But the expert provides an opinion, based on the specialized area of knowledge, not that he believe a fact is true and thereby provides testimony of such fact. As discussed in Weinstein’s Federal Evidence,

§ 602.02 Purpose and Applicability of Rule

[1] Personal Knowledge Based on Sensory Perception

A witness may testify only about matters on which he or she has first-hand knowledge. Because most knowledge is inferential, personal knowledge includes opinions and inferences grounded in observations or other first-hand experiences. The witness's testimony must be based on events perceived by the witness through one of the five senses.

[2] Effect on Opinion Testimony

[a] Expert Witnesses Not Affected

Rule 602 is expressly subject to Rule 703, which governs opinion testimony by expert witnesses. Experts may testify without personal knowledge.

[b] Limitation on Lay Witness's Opinion Testimony

Opinion testimony by lay witnesses is governed by Rule 701, which imposes a personal knowledge requirement in the following language: "If a witness is not testifying as an expert, testimony in the form of an opinion is limited to one that is ... rationally based on the witness's perception." Legal scholars have suggested that originally the rule against opinions was merely an alternative statement of the rule requiring knowledge (see § 602.04).⁶

3 Weinstein's Federal Evidence § 602.02.

Paragraph 3. As part of Ms. Tollefson's "ordinary duties, she states that she supervises the Debtor's account associated with the lease that is the subject of the Motion. Therefore, she says that she has verified the status of the account, however she provides no testimony as to what is that status or information about the account. Ms. Tollefson provides no testimony as to what her supervisory duties are with respect to the files.

Ms. Tollefson further testifies that the documents and records were prepared in the ordinary course of business by Movant, and so testifies based on her "knowledge, INFORMATION AND BELIEF."

Paragraph 4. Ms. Tollefson testifies that the Lease Agreement copy provided as Exhibit A is a true copy.

Paragraph 5. Ms. Tollefson testifies that Exhibit B is a true and correct copy of Schedule A that was entered into by Movant, Debtor, and three non-debtor individuals.

Paragraph 6. Ms. Tollefson states that she communicated with an unidentified "representative" of the Karen Peters Insurance Agency, Inc., from which Movant previously received a certificate of insurance for the property that is Movant's collateral, and that Ms. Tollefson heard the representative say that the collateral was no longer insured under a policy issued by that insurance agency.

See, Federal Rules of Evidence 801 et seq. which address what constitutes “hearsay” and that it is prohibited, except for specified circumstances. The court cannot identify any exceptions that apply to the forgoing testimony as to what the representative said.

DISCUSSION

Movant has presented arguments for a colorable claim for title to and possession of this property. As stated by the Bankruptcy Appellate Panel, relief from stay proceedings are summary proceedings that address issues arising only under 11 U.S.C. Section 362(d). *Hamilton v. Hernandez (In re Hamilton)*, No. CC-04-1434-MaTK, 2005 Bankr. LEXIS 3427, at *8–9 (B.A.P. 9th Cir. Aug. 1, 2005) (citing *Johnson v. Righetti (In re Johnson)*, 756 F.2d 738, 740 (9th Cir. 1985)). The court does not determine underlying issues of ownership, contractual rights of parties, or issue declaratory relief as part of a motion for relief from the automatic stay in a Contested Matter (Federal Rule of Bankruptcy Procedure 9014).

Even though no opposition has been filed, the lack of evidence provided by Movant causes the court significant concern. Then, reviewing the Declaration which lacks any personal knowledge testimony and is drafted as merely a “rubber stamp” of what the attorney alleges, elevates that concern such that if the court were to grant the Motion it would create the appearance that the Federal Rules of Evidence enacted by the U.S. Supreme Court are merely general concepts and not “rules” which much be followed.

Thus, granting the Motion based on the “evidence” provided may create a “green light” for attorneys to wrongly believe that they can skirt the Rules and just slide “stuff” by the court.

At the hearing, **XXXXXXX**

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Relief from the Automatic Stay filed by Farm Credit Leasing Services Corporation (“Movant”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is **XXXXXXX**.

FINAL RULINGS

4. [23-90305-E-7](#) NAYANA WALKER AND MOTION FOR RELIEF FROM
[SKI-1](#) NIEKOLAS CHADWICK AUTOMATIC STAY
 VASQUEZ 7-21-23 [\[13\]](#)
 Seth Hanson

EXETER FINANCE LLC VS.

Final Ruling: No appearance at the September 7, 2023 hearing is required.

Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, parties requesting special notice, and Office of the United States Trustee on July 21, 2023. By the court's calculation, 48 days' notice was provided. 28 days' notice is required.

The Motion for Relief from the Automatic Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion for Relief from the Automatic Stay is granted.
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Exeter Finance LLC ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2021 Toyota Corolla, VIN ending in 5897 ("Vehicle"). The moving party has provided the Declaration of Nancy Wafer to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Nayana Walker and Niekolas Chadwick Vasquez ("Debtors").

Movant also provides evidence that there are over four pre-petition payments in default, with a pre-petition arrearage of \$3,596.71. Declaration, Dckt. 15. Additionally, Movant states they have repossessed the Vehicle and are in possession of it as of June 21, 2023. Also, although the Vehicle is listed in Debtor's Statement of Financial Affairs, it is not listed under Debtor's Statement of Intention. Dckt. 1.

J.D. Power Used Car Guide Valuation Report Provided

Movant has also provided a copy of the J.D. Power Used Car Guide Valuation Report for the Vehicle. The Report has been properly authenticated and is accepted as a market report or commercial publication generally relied on by the public or by persons in the automobile sale business. FED. R. EVID. 803(17).

DISCUSSION

From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this asset is determined to be \$31,646.09 (Declaration, Dckt. 15), while the value of the Vehicle is determined to be \$23,000 as stated on the J.D. Power Used Car Guide Valuation Report. Debtor's Statement of Financial Affairs states the Vehicle was repossessed and has an unknown value. Dckt. 1.

11 U.S.C. § 362(d)(1): Grant Relief for Cause

Whether there is cause under 11 U.S.C. § 362(d)(1) to grant relief from the automatic stay is a matter within the discretion of a bankruptcy court and is decided on a case-by-case basis. *See J E Livestock, Inc. v. Wells Fargo Bank, N.A. (In re J E Livestock, Inc.)*, 375 B.R. 892 (B.A.P. 10th Cir. 2007) (quoting *In re Busch*, 294 B.R. 137, 140 (B.A.P. 10th Cir. 2003)) (explaining that granting relief is determined on a case-by-case basis because "cause" is not further defined in the Bankruptcy Code); *In re Silverling*, 179 B.R. 909 (Bankr. E.D. Cal. 1995), *aff'd sub nom. Silverling v. United States (In re Silverling)*, No. CIV. S-95-470 WBS, 1996 U.S. Dist. LEXIS 4332 (E.D. Cal. 1996). While granting relief for cause includes a lack of adequate protection, there are other grounds. *See In re J E Livestock, Inc.*, 375 B.R. at 897 (quoting *In re Busch*, 294 B.R. at 140). The court maintains the right to grant relief from stay for cause when a debtor has not been diligent in carrying out his or her duties in the bankruptcy case, has not made required payments, or is using bankruptcy as a means to delay payment or foreclosure. *W. Equities, Inc. v. Harlan (In re Harlan)*, 783 F.2d 839 (9th Cir. 1986); *Ellis v. Parr (In re Ellis)*, 60 B.R. 432 (B.A.P. 9th Cir. 1985). The court determines that cause exists for terminating the automatic stay, including defaults in post-petition payments that have come due. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432.

11 U.S.C. § 362(d)(2)

A debtor has no equity in property when the liens against the property exceed the property's value. *Stewart v. Gurley*, 745 F.2d 1194, 1195 (9th Cir. 1984). Once a movant under 11 U.S.C. § 362(d)(2) establishes that a debtor or estate has no equity in property, it is the burden of the debtor or trustee to establish that the collateral at issue is necessary to an effective reorganization. 11 U.S.C. § 362(g)(2); *United Sav. Ass'n of Texas v. Timbers of Inwood Forest Assocs. Ltd.*, 484 U.S. 365, 375–76 (1988). Based upon the evidence submitted, the court determines that there is no equity in the Vehicle for either Debtor or the Estate. 11 U.S.C. § 362(d)(2). This being a Chapter 7 case, the Vehicle is *per se* not necessary for an effective reorganization. *See Ramco Indus. v. Preuss (In re Preuss)*, 15 B.R. 896 (B.A.P. 9th Cir. 1981).

The court shall issue an order terminating and vacating the automatic stay to allow Movant, and its agents, representatives and successors, to exercise its rights to obtain possession and control of the Vehicle, including appropriate judicial proceedings and remedies to obtain possession thereof.

Federal Rule of Bankruptcy Procedure 4001(a)(3)
Request for Waiver of Fourteen-Day Stay of Enforcement

Federal Rule of Bankruptcy Procedure 4001(a)(3) stays an order granting a motion for relief from the automatic stay for fourteen days after the order is entered, unless the court orders otherwise. Movant requests, particularly because Movant obtained possession of the Vehicle pre-petition and because Debtor's Statement of Intention does not list the vehicle, that the court grant relief from the Rule as adopted by the United States Supreme Court.

Movant has pleaded adequate facts and presented sufficient evidence to support the court waiving the fourteen-day stay of enforcement required under Federal Rule of Bankruptcy Procedure 4001(a)(3), and this part of the requested relief is granted.

No other or additional relief is granted by the court.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Relief from the Automatic Stay filed by Exeter Finance LLC ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED the Motion is granted and the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Movant, its agents, representatives, and successors, and all other creditors having lien rights against the Vehicle, under its security agreement, loan documents granting it a lien in the asset identified as a 2021 Toyota Corolla, VIN ending in 5897 ("Vehicle"), and applicable nonbankruptcy law to obtain possession of, nonjudicially sell, and apply proceeds from the sale of the Vehicle to the obligation secured thereby.

IT IS FURTHER ORDERED that the fourteen-day stay of enforcement provided in Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived for cause.

No other or additional relief is granted.

WELLS FARGO BANK, N.A. VS.

Final Ruling: No appearance at the September 7, 2023 hearing is required.

Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, and Office of the United States Trustee on July 27, 2023. By the court's calculation, 42 days' notice was provided. 28 days' notice is required.

The Motion for Relief from the Automatic Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

<p>The Motion for Relief from the Automatic Stay is granted.</p>

Wells Fargo Bank, N.A., dba Wells Fargo Auto ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2016 Jeep Compass-4CYL, VIN ending in 5909 ("Vehicle"). The moving party has provided the Declaration of Donna Sallee to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Sara C Mello ("Debtor").

Movant argues Debtor has not made four (4) post-petition payments, with a total of \$1,585.29 in post-petition payments past due. Declaration, Dckt. 61.

J.D. Power Valuation Report Provided

Movant has also provided a copy of the J.D. Power Guide Valuation Report for the Vehicle. The Report has been properly authenticated and is accepted as a market report or commercial publication generally relied on by the public or by persons in the automobile sale business. FED. R. EVID. 803(17).

TRUSTEE'S STATEMENT OF NONOPPOSITION

Trustee's August 8, 2023 docket entry reflects nonopposition to the Motion.

DISCUSSION

From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this asset is determined to be \$12,674.48 (Declaration, Dckt. 61), while the value of the Vehicle is determined to be \$11,650.00, as stated on the J.D. Power Valuation Report, which is slightly more than the value as stated in Schedules A/B and D filed by Debtor (Dckt. 1).

11 U.S.C. § 362(d)(1): Grant Relief for Cause

Whether there is cause under 11 U.S.C. § 362(d)(1) to grant relief from the automatic stay is a matter within the discretion of a bankruptcy court and is decided on a case-by-case basis. *See J E Livestock, Inc. v. Wells Fargo Bank, N.A. (In re J E Livestock, Inc.)*, 375 B.R. 892 (B.A.P. 10th Cir. 2007) (quoting *In re Busch*, 294 B.R. 137, 140 (B.A.P. 10th Cir. 2003)) (explaining that granting relief is determined on a case-by-case basis because "cause" is not further defined in the Bankruptcy Code); *In re Silverling*, 179 B.R. 909 (Bankr. E.D. Cal. 1995), *aff'd sub nom. Silverling v. United States (In re Silverling)*, No. CIV. S-95-470 WBS, 1996 U.S. Dist. LEXIS 4332 (E.D. Cal. 1996). While granting relief for cause includes a lack of adequate protection, there are other grounds. *See In re J E Livestock, Inc.*, 375 B.R. at 897 (quoting *In re Busch*, 294 B.R. at 140). The court maintains the right to grant relief from stay for cause when a debtor has not been diligent in carrying out his or her duties in the bankruptcy case, has not made required payments, or is using bankruptcy as a means to delay payment or foreclosure. *W. Equities, Inc. v. Harlan (In re Harlan)*, 783 F.2d 839 (9th Cir. 1986); *Ellis v. Parr (In re Ellis)*, 60 B.R. 432 (B.A.P. 9th Cir. 1985). The court determines that cause exists for terminating the automatic stay, including defaults in post-petition payments that have come due. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432.

11 U.S.C. § 362(d)(2)

A debtor has no equity in property when the liens against the property exceed the property's value. *Stewart v. Gurley*, 745 F.2d 1194, 1195 (9th Cir. 1984). Once a movant under 11 U.S.C. § 362(d)(2) establishes that a debtor or estate has no equity in property, it is the burden of the debtor or trustee to establish that the collateral at issue is necessary to an effective reorganization. 11 U.S.C. § 362(g)(2); *United Sav. Ass'n of Texas v. Timbers of Inwood Forest Assocs. Ltd.*, 484 U.S. 365, 375–76 (1988). Based upon the evidence submitted, the court determines that there is no equity in the Vehicle for either Debtor or the Estate. 11 U.S.C. § 362(d)(2). This being a Chapter 7 case, the Vehicle is *per se* not necessary for an effective reorganization. *See Ramco Indus. v. Preuss (In re Preuss)*, 15 B.R. 896 (B.A.P. 9th Cir. 1981).

The court shall issue an order terminating and vacating the automatic stay to allow Movant, and its agents, representatives and successors, and all other creditors having lien rights against the Vehicle, to repossess, dispose of, or sell the asset pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, to obtain possession of the asset.

No other or additional relief is granted by the court.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Relief from the Automatic Stay filed by Wells Fargo Bank, N.A., dba Wells Fargo Auto (“Movant”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED the Motion is granted and the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Movant, its agents, representatives, and successors, and all other creditors having lien rights against the Vehicle, under its security agreement, loan documents granting it a lien in the asset identified as a 2016 Jeep Compass-4CYL, VIN ending in 5909 (“Vehicle”), and applicable nonbankruptcy law to obtain possession of, nonjudicially sell, and apply proceeds from the sale of the Vehicle to the obligation secured thereby.

No other or additional relief is granted.

**DEUTSCHE BANK NATIONAL TRUST
COMPANY VS.**

Final Ruling: No appearance at the September 7, 2023 Hearing is required.

Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 11, and Office of the United States Trustee on August 10, 2023. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

The Motion for Relief from the Automatic Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

**The hearing on the Motion for Relief from the Automatic Stay is continued to
September 28, 2023, at 10:00 a.m.**

Deutsche Bank National Trust Company ("Movant") seeks relief from the automatic stay with respect to Ramil Abalkhad and Melina Abalkhad's ("Debtor") real property commonly known as 25561 Prado De Las Flores, Calabasas, California ("Property"). Movant has provided the Declaration of Stephen Byers to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

Movant argues Debtor owes \$4,325,226.16 on a Foreclosure Judgment. Additionally, Movant states the Judgment continues to accrue interest at \$316.33 per day.

DEBTOR'S OPPOSITION

Debtor filed an Opposition on August 24, 2023. Dckt. 146. Debtor proposes to make adequate protection payments to Movant of \$15,000 per month, starting September 15, 2023 and on the 15th of each month thereafter.

PARTIES STIPULATION

On August 30, 2023, the parties filed a Stipulation for Continuance. The parties agree to a continuance of the hearing currently set for September 7, 2023, by approximately twenty-one (21) days. Additionally, Movant reserves their right to file a Reply by at least 7 calendar days prior to the continued hearing.

The court continues the hearing to September 28, 2023, at 10:00 a.m.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Relief from the Automatic Stay filed by Deutsche Bank National Trust Company (“Movant”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the hearing on the Motion for Relief is continued to **September 28, 2023, at 10:00 a.m.**